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WHOSE BEST PRACTICES? THE SIGNIFICANCE OF CONTEXT IN AND FOR TRANSNATIONAL CRIMINAL JUSTICE INDICATORS

David Nelken*

'to change something you do not understand is the true nature of evil.'¹

The questions posed by the editors of this special issue include the following: 'If transfers of policy and practice can sometimes be desirable, what part can or should cross-cultural research play in defining good transnational practice and assessing the consequences, both good and bad, of transfer? What kinds of comparative research might be appropriate to the task? To what extent is it desirable to seek to identify transnational good or best practice? What are the difficulties and challenges in doing so validly?'² The claim to be made here is that some light may be thrown on these difficult issues also by starting the other way round, by examining the spread of so-called global social indicators as a series of projects that themselves presuppose and serve to produce what counts as 'good' practice.

To appreciate how what come to be defined as best practices are constructed, we need to understand the type of comparisons that these projects rely on. Studying the role of comparison in global indicators in this way is an example of what can be called 'second order' comparison where the aim is less to engage in comparison directly than to study comparisons as a social practice engaged in by others.³ It involves studying the way individuals, agencies and organizations actually go about

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¹ J. Winterson, (1991) *Oranges are not the only fruit*, London, Vintage (1991): 138.

² This paper is a much revised version of one presented at the Cardiff workshop on 'Best practice in security and justice: from cross-cultural description and explanation to transnational prescription?' 15-16 May 2017.

³ For previous efforts to develop this argument see D. Nelken, 'The changing roles of social indicators: from explanation to governance', in P. Alldridge, L. Cheliotis and V. Mitsilegas (eds.), *Globalisation, Criminal Law and Criminal Justice: Theoretical, Comparative and Transnational*

comparing. It asks what claims - whether true or not⁴ - are made about what goes on in other places so as to understand when, where and why descriptions and evaluations are found plausible and what consequences follow. Those following this approach focus less on the eventual effects of indicators than on the sites of formulation, use, and resistance to indicators, in places such as committee rooms or offices, typically far from the sites where the data is collected. They seek to understand the 'politics of comparison' for those comparing and those being compared.

The paper begins by describing the increasing attention being paid by comparative criminal justice scholars to processes of legal and policy transfers and the spreading of global prescriptions, and notes the call for criminologists to support and criticize the recent global targets set by the United Nations in the field of criminal justice. It goes on to distinguish the goals of different kinds of comparisons, and shows the way different purposes shape the use of indicators and the importance given to understanding the contexts being compared. Crucially, it argues that those engaged in exercises of transnational ranking and target setting may often be more interested in changing contexts than in understanding them. The paper then revisits the debate concerning the so-called knowledge and governance 'effects' of social indicators so as to discuss the implications these have for efforts to pursue global projects of social improvement.

From comparative criminal justice to global prescriptions

It is increasingly recognised that it makes little sense to think about criminal justice systems in terms of separable national jurisdictions at a time of international and transnational links between both crime threats and criminal justice responses.⁵ Local debates make ever more reference to what

Perspectives (2015) 25-44; and D. Nelken, 'From pains-taking to pains-giving comparisons' (2016) 12 *International Journal of Law in Context*, 390-403.

⁴ See e.g. the views of Polish prosecutors concerning decision making by their colleagues in Western Europe cited in P. Polak and D. Nelken, 'Polish Prosecutors, Corruption and Legal Culture', in A. Febbrajo and W. Sadurski eds. *East-Central Europe After Transition: Towards a New Socio-Legal Semantics*. (2010) 219-254.

⁵ D. Nelken, 'The challenge to comparative criminal justice' in *Globalisation and the challenge to Criminology*, ed. F. Pakes (2012) 9-26. See also (discussing maximalist and minimalist definitions

is (said to be) going on in other places, and decisions about criminal justice are made not only in response to local challenges but also so as to (re)position a society in relation to others.⁶ Well known examples here include Finland's reaction to published rankings of its high incarceration rates as compared to its Scandinavian neighbours,⁷ or the shock experienced in the Netherlands at its relatively high crime rate reported by the first International Crime Victimization Survey in 1989 (largely attributed to the relatively high rate of bicycle theft).⁸

There is wide agreement that students of comparative criminal justice need to pay more attention to what actually happens when transnational developments encounter the national and local levels.⁹ Some scholars even go as far as arguing that the increasing salience of these interactions means that we should abandon comparative criminal justice, especially that based on comparing national units, in favour of a focus on global and transnational crime and criminal justice.¹⁰ But despite repeated calls for the study of such processes there is still little agreement on how best to study how change is produced through relational comparisons rather than endogenous developments. What

of transnational criminal law) R. Ivory 'Beyond transnational criminal law: anti-corruption as global new governance' (2018) 6 *London Review of International Law* 413–442.

⁶ See e.g. T. Newburn, and R. Sparks (eds.) *Criminal Justice and Political Cultures: National and International Dimensions of Crime Control* (2004), and D. Melossi, M. Sozzo, R. Sparks, (eds.) *Travels of the Criminal Question: Cultural Embeddedness and Diffusion* (2011).

⁷ Tapio Lappi-Seppälä, 'The Fall of the Finnish Prison Population' (2000) 1 *Journal of Scandinavian Studies in Criminology and Crime Prevention* 1.

⁸ See J. J.M. van Dijk, 'The International Crime Survey: a tool for the planning and evaluation of national crime policies', International Conference on Understanding Crime: Experiences of Crime and Crime- Control (1992) Rome, at: <https://www.ncjrs.gov/pdffiles1/Photocopy/136446NCJRS.pdf> accessed 20/5/2019.

⁹ See, most recently, T. Newburn, T. Jones, and J. Blaustein, 'Policy mobilities and comparative penalty ' (2018) 22 *Theoretical Criminology* 563–581. The authors rightly note the difference between what they call 'talk, decision and action'.

¹⁰ N. Larsen and R. Smandych (eds.) *Global Criminology and Criminal Justice: Current Issues and Perspectives* (2008). But see the reservations expressed by Piers Beirne in his 'Preface' to their collection at p. ix. Cf. also F. Pal 'The Comparative Method in Globalised Criminology' (2010) 43 *Australian & New Zealand Journal of Criminology*

actors are involved in projecting and implementing comparisons?¹¹ Who provides the evidence (or gossip?) that shapes patterns of emulation and conformity? What other forms of knowledge are being suppressed?¹² The need for case studies is especially pressing given the equivocal findings of those we have so far. For example, even where cultural traditions about criminal justice were seemingly most compatible - as between the USA and England and Wales - attempts to mimic American punitive strategies such as 'three strikes and you are out' had limited effects in practice.¹³ On the other hand, other institutional inventions borrowed from the USA, such as problem-solving courts, have succeeded in spreading without difficulty, at least in the common law world.¹⁴ But what explains the difference?

New questions are posed if we turn from considering the case of specific legal transfers and transplants to asking how generalising global prescriptions are made and spread. What legitimates official criminal justice comparisons, who are (and who are not) consulted - in short, whose voices matter? Typically such exercises are outsourced to local experts. But what makes someone an expert? How much is it important that they know about their own systems and how much that they are familiar with looking at other systems? Who chooses such experts? These questions are key to understanding for example the work of the UN and the EU in creating model laws and monitoring minimum standards of best practice in criminal justice.¹⁵ The United Nations Office on Drugs and

¹¹ D. Nelken (ed.) *Comparative Criminal Justice and Globalisation*, (2011). See also F. Heidensohn, 'Doing research on crime and justice' in R. D. King and E. Winkup (eds.) *International comparative research in criminology* (2007) 199-229, and F. Heidensohn, 'Contrasts and concepts: considering the development of comparative criminology' in T. Newburn, and P. Rock (eds.) *The Politics of Crime Control: Essays in Honour of David Downes* (2009) 173-196.

¹² E. Darian-Smith, *Laws and Societies in Global Contexts: Contemporary Approaches* (2013); B. de Sousa Santos, *Epistemologies of the South: Justice Against Epistemicide* (2016).

¹³ T. Jones and T. Newburn, 'Policy Transfer and Criminal Justice: Exploring US Influence over British Crime Control Policy' (2007).

¹⁴ J. Nolan *Legal accents, legal borrowing: The international problem-solving court movement* (2009).

¹⁵ See e.g. UNODC's data and analysis index at <https://www.unodc.org/unodc/en/data-and-analysis/index.html>, accessed 20/05/2019; EMCDDA's policy and practice briefings on the criminal justice system: http://www.emcdda.europa.eu/best-practice/briefings/prisons-and-the-criminal-justice-system_en, accessed: 20/05/2019; and the work of the Council of Europe European

Crime (UNODC) sets out guidelines, initiated in 2008, about 'Good practices in the protection of witnesses in criminal proceedings involving organized crime.' It tells us that 'good practices were developed in a series of regional meetings comprised of expert representatives from the criminal justice sector'¹⁶. It also explains that it uses experts to implement transnational and international standards.¹⁷

But is a global 'gaze' on crime threats and criminal justice really possible? Can it avoid the risk of taking as global what is in fact local? How is the globalisation of the 'local' accomplished? UNODC informs us that it 'develops model laws and model provisions with the view to assisting governments to translate their obligations under international treaties into national legislative provisions... The model laws are not intended to replace the meticulous process of drafting national legislation and they focus on *substance over form* that differs depending on the legal system of a given state' (my underlining).¹⁸ So far they have sponsored model laws against trafficking in persons and against the smuggling of migrants (both in 2010) and concerning Money-Laundering and Financing of Terrorism (in 2005 and 2009).¹⁹ But, given the variation in the interests and values of the countries affected by these problems,²⁰ the appeal to substance over form may underestimate what is at stake in writing similar laws for very different places.

Commission for the efficiency of justice: <https://www.coe.int/en/web/cepej/home>, accessed 20/05/2019.

¹⁶ See https://www.unodc.org/unodc/en/organized-crime/tools-and-publications.html#Manuals_Handbooks_Best_Practices.accessed 20/5/2019.

¹⁷ The United Nations Convention against Corruption for example relies on an Implementation Review Mechanism (IRM), now in its second cycle. This is a peer review process that assists State parties to effectively implement the Convention. Each state is allowed to nominate up to 15 experts and each State party is reviewed by two peers - one from the same regional group - which are selected by a drawing of lots at the beginning of each year of the review cycle. See <https://www.unodc.org/unodc/en/corruption/index.html?ref=menuside>, accessed 20/5/2019.

¹⁸ op.cit. note 18.

¹⁹ id.

²⁰ See e.g. D.Nelken ' Human Trafficking and Legal Culture ' (2010) 43 *Isr. L. Rev.* 479.

The challenges of reaching cross national understanding have of course long been noted in the way criminologists use comparative statistical indicators such as prison and recidivism rates in their research and policy making. But more and more - and it is this which interests us here - criminologists are also being encouraged to engage with global social indicators²¹ as the kind of information which can be used to assess progress in dealing with these transnational social problems. In a recent important contribution Blaustein et. al. urge criminologists to give more attention to the recently announced United Nations sustainability development goals (SDG's).²² This ambitious UN initiative sets out a range of seventeen idealistic targets to be achieved by 2030 (starting from, as target number 1, 'no poverty').²³ Blaustein et. al. explain that, unlike the previous Millennium Development goals that this initiative replaces, these targets also address issues relating to crime, justice and security, treating domestic crime problems as a transnational challenge and transnational problems as a local one, and mandating the exchange of best practices as a way achieving progress. Thus, under the heading 'The Road to 2030, Achieving the Goals', the UN website tells us:

'Action to achieve the SDG's must take place at many levels, but action at the local level is critical. The High-Level Political Forum serves as the essential global forum for providing political leadership, guidance on achieving the SDG's by 2030 through the sharing of experiences, including success stories on the ground, as well as developing recommendations for strengthening implementation, follow up and review of the SDG's. In this role the Forum promotes accountability, fostering an exchange of best practices and supporting international cooperation...The Forum also provides an opportunity for the international community to review progress on the Goals in regions

²¹ A global social indicator is defined by leading commentators as 'a named collection of rank-ordered data that purports to represent the past or projected performance of different units. The data are generated through a process that simplifies raw data about a complex social phenomenon. The data, in this simplified and processed form, are capable of being used to compare particular units of analysis (such as countries or institutions or corporations), synchronically or over time, and to evaluate their performance by reference to one or more standards'. See K. Davis, B. Kingsbury and S. Merry *Governance by Indicators. Global Power through Quantification and Rankings* (2012), 6.

²² J. Blaustein, N. Pino, K. Fitz-Gibbon, and R. White, 'Criminology and the UN Sustainable Development Goals: The Need for Support and Critique' (2017) 58 *British J. of Criminology* 767-786.

²³ See <https://www.un.org/sustainabledevelopment/monitoring-and-progress-hlpf/>. accessed 30/12/2018.

where there are countries experiencing certain risks and vulnerabilities and includes Voluntary National Reviews of the participating countries, which are intended to track and accelerate progress in implementing the 2020 Agenda, with a particular focus on the poorest, most vulnerable and those furthest behind.’²⁴

Blaustein et. al. argue that criminologists should both support this endeavour and also act as friendly critics. Working with NGOs, they believe, can provide a platform for moral entrepreneurship. It can assist with the design, implementation and evaluation of projects that contribute to safe, just and sustainable societies. This can then help for example to eradicate forced labour, end modern slavery and human trafficking and secure the prohibition and elimination of the worst forms of child labour, and promote safe and secure working environments for all workers, including migrant workers, in particular women workers, and those in precarious employment.²⁵ On the other hand, their support for such a commitment is balanced by critique based on 'caution', 'scepticism', and making reference to Southern epistemologies.

This leads them to query both the definition of the problems and the solutions to the problems that the UN targets are there to measure. In terms of definitions, they note that 'reducing violence, promoting the rule of law, fighting corruption and improving access to justice are hardly controversial aspirations', especially as the 'SDG 16 is neither prescriptive nor restrictive about how these targets should be met.'²⁶ But they go on to add that such aspirations may be uncontroversial only because they mean different things to different people (at different times and in different places). They explain that,

'the neutral language of the SDGs serves to mask the political complexities and fault-lines of the crime-development nexus. For example, SDG 16.2 includes a reference to the term 'trafficking'. No criminologist would contest that the exploitation or abuse of children is deeply problematic but 'trafficking' is a messy concept that eludes simple definition and measurement.'

For them, 'failure to interrogate these targets and approach them with caution may therefore result in the validation and dissemination of harmful and counterproductive policies.'²⁷ They acknowledge, likewise, 'that the targets on gender-based violence are drafted using vague and outwardly innocuous language that often masks contentious issues noting that 'there is an ongoing debate between radical

²⁴ id.

²⁵ Blaustein et.al 2017, op.cit. note 25.

²⁶ id. 775.

²⁷ id. 776

and intersectional feminists about whether or not commercial sex should be treated as a form of violence against women.²⁸ In terms of solutions, on the other hand, they highlight the danger that strengthening criminal justice could lead to 'inappropriate, criminogenic, oppressive, unjust or otherwise harmful crime control policies and (...) may be used to disproportionately target ethnic minority and indigenous communities thereby resulting in human rights violations and potentially undermining the legitimacy of the police'.²⁹

Despite these reservations, for Blaustein et. al., the SDG's target setting 'provides the best available framework for balancing local development and security needs with global priorities of criminological concern, including the protection of human rights and environmental justice.'³⁰ In large part, this is because this initiative endorses the Sen-Nussbaum 'human capabilities' approach,³¹ which focuses more on measures of life chances in health and education than on criteria related to the neo-liberal drive to stimulate economic growth by expanding market freedom. It will be argued here however that there may be drawbacks in pursuing even noble aims through the use of global indicators.³² The approach taken by Blaustein et. al. fails to engage with those writers who see the drive to spread human and civil rights through criminal justice indicators as itself an intrinsic feature of current forms of governmentality.³³ Rather than just providing measures of best practice in domestic and transnational efforts to improve criminal justice responses, the exercise in comparison

²⁸ id. 778.

²⁹ id. 776.

³⁰ id. 769.

³¹ See M. C. Nussbaum, "Capabilities of Human Rights" (1997) 66 *Fordham L. Rev.* 273; A. Sen, *Development as Freedom* (1999). Blaustein et. al. note 25, therefore reject Escobar's (earlier) call for 'alternatives to development' as opposed to alternative models of development. See, however, W. Davies, 'Spirits of Neoliberalism: 'Competitiveness' and 'Wellbeing' Indicators as Rival Orders of Worth', in R. Rottenburg et al. (eds.) *The World of Indicators. The Making of Governmental Knowledge through Quantification* (2015), 285.

³² e.g. Blaustein et. al. (op. cit. note 25, 778) argue that 'Criminologists might therefore help development actors separate evidence about commercial sex work from ideology and ensure that the language of these targets is not misconstrued for ideological purposes'.

³³ See B. Sokhi -Bulley 'Governing (through) Rights: Statistics as technologies of governmentality', (2011) 20 *Social & Legal Studies* 139–55 and her *Governing (through) Rights* (2016).

that characterise global indicators can itself be seen as a form of social control.³⁴ Thus, even if the goals sought by indicators are different from neo-liberal ones they still aim at the 'responsibilisation' of states, corporations and individuals. Because they thus reflect and reproduce 'audit society', indicators are more than just neutral tools.³⁵ To make these points clearer we will now investigate the way comparison works when it is linked to target setting as a key element in the now considerable literature describing and criticising reliance on global social indicators.³⁶

The aims of comparison, the uses of indicators, and the relevance of context

How do global indicators recognize good practices? What type of comparisons are produced in doing so? What are the relevant 'contexts' of such comparisons? In general, types of comparisons can be distinguished into 1) 'disciplinary comparisons', concerned with understanding difference for its own sake, 2) those where policy evaluations are uppermost, and 3) those where differences in current standards are ranked so as to provide a basis for informed choice and/or bring about changed behaviour.³⁷ The aim of 'disciplinary comparisons' is to describe, understand or explain social variation as part of developing a given intellectual discipline such as history, sociology, anthropology or political science. Their findings may also have implications for policy making; but at least some of the searched for links between variables may not lend themselves to easy manipulation. Where

³⁴ We shall be concentrating here on the links between indicators and comparison. But the UN Sustainability targets can of course also be examined under other headings, such as the way they set about the tasks of goal setting, rule making and norm promotion, see e.g. *Governing through Goals: Sustainable Development Goals as Governance Innovation*, eds. N. Kanie and F. Biermann (2017).

³⁵ C. Shore, and S. Wright 'Governing by Numbers: Audit Culture, Rankings and the New World Order' (2015) 23 *Social Anthropology*, 22-28.

³⁶ Useful collections of case studies include Davis et. al., op.cit. note 24; B. Frydman and A. Van Waeyenberge eds., *Gouverner par les standards et les indicateurs. De Hume aux rankings* (2014); S. E. Merry, K. E. Davis and B. Kingsbury eds., *The Quiet Power of Indicators. Measuring Governance, Corruption, and Rule of Law* (2015); Rottenberg (2015) op.cit. note 34; M. Siems and D. Nelken (eds.) *Global social indicators: Constructing Transnational legitimacy* (2017) 13 *International Journal of Law in Context*; D. V. Malito, G. Umbach, N. Bhuta, (eds.) *The Palgrave Handbook of Indicators in Global Governance* (2018).

³⁷ see Nelken, op.cit. (2016), n. 3.

comparison is guided by policy, it usually serves as a means to learn from what are claimed to be better (or, more rarely, worse) practices elsewhere, or to compare outcomes of planned change against intentions or benchmarks. The final approach to comparison, which is most relevant here, may be called 'ranking comparisons'. Amongst other goals these are used to justify distributary or other decisions as well as influence countries or organisation to take responsibility for their behaviour so as to improve performance.³⁸

Comparative enquiries make use of indicators in different ways. In terms of our three kinds of comparison we can speak for example of 1) explanatory indicators, meaning the indices or proxies that social scientists use when seeking to construct explanations of variance in furtherance of theoretical claims about connections between variables - for example between corruption and economic development. In one mainstream version of this type of comparison, any such correlations found may then be tested for statistical significance. Alternatively, there are 2) policy indicators, that is, measures or targets used in evaluating the performance of institutions or setting and assessing the results of social interventions. Finally, when it comes to ranking comparisons, there are 3) the type of indicators of standards that are designed to raise standards such as the UN SDG targets that Blaustein et. al. discuss.

Approaches to comparison have different ways of attributing relevance to context - even if there are also crucial internal disagreements. Disciplinary comparisons have in common their aim to identify what is similar and different in various contexts. But they can do so for example either by searching for invariant links, say between age and crime across all contexts, or by focusing on the specificity of concepts in varying social and cultural settings, when using interpretative approaches such as 'thick description'. With the positivist 'view from nowhere,' context means the play of theoretically selected variables. For the more interpretative approaches, the view is always 'from somewhere' and context is brought into perspective by moving between the 'etic' and 'emic' stances, or external and internal perspectives, in the effort to grasp the meaning of social practices to the actors involved in them.

Those engaged in the second type of comparison that we have identified also tend to adopt a 'view from somewhere' as they seek to learn lessons about potentially useful new institutions and practices to apply in their own contexts. What matters for them above all is how to change a given context for the better. Those seeking to import ideas from elsewhere may even willingly overlook

³⁸ The range of functions of these kind of indicators is captured in the title of a recent study of the application of ranking indicators in the university world see W.N. Espeland, *Engines of Anxiety: Academic Rankings, Reputation and Accountability* (2016).

aspects that distinguish the originating context since for them the crucial issue is whether they can stimulate efforts to bring about changes in the new context.³⁹ With ranking exercises, especially where the aim is to change other places, the claim made is usually more universalistic. Those who make them are concerned with judging conduct according to a standard that transcends the contexts which may shape the conduct concerned. Their purported 'view from everywhere' creates a score for each unit being judged relative to an external target or standard.⁴⁰

The polysemic meanings of the term indicators embrace promiscuously all of these scientific, pragmatic and programmatic uses. But paying more attention to the logics of comparison built into different kinds of indicators could help clarify how they should be understood and criticised in different ways. John Muncie and Barry Goldson, for example, in their influential work on comparative youth justice, helpfully put together explanations why some prison numbers are out of line with other places whilst also assessing countries with high incarceration rates in terms of their poor records of compliance with human rights.⁴¹ But the way they argue their case shows clearly that explaining which of a variety of factors best correlates with incarceration rates requires different types of evidence to that which is needed when criticizing criminal justice standards. What makes sense when indicators are used for explanatory purposes may be less appropriate when indicators are used for policy interventions or for schemes for naming and shaming - and vice versa. Deciding whether places are more or are less severe towards offenders requires that we compare 'like with like' regarding crime challenges, and also paying attention, as is not always done, to the relative availability in each society of alternative ways of preventing or resolving them. But showing that places are less

³⁹ D. Nelken, 'Foil comparisons or foiled comparisons? Learning from Italian juvenile justice' (2015) 12 *European Journal of Criminology* 519-534.

⁴⁰ Leading exponents of evaluation such as R. Pawson and N. Tilley, (*Realistic Evaluation* (1997)) tell us that it is essential to understand contexts in any attempt to assess the likely success of an intervention. Context for them does not necessarily coincide with locality but refers to the conditions needed for a given measure to trigger mechanisms to produce particular outcomes patterns. The question that they say needs to be asked is what works, for whom, in what circumstances? But to find the answer to that question requires purposefully gathering appropriate data about relevant differences in conditions, not, as ranking indicators usually tend to do, putting together whatever is available.

⁴¹ See e.g. B. Goldson, 'Reading the present and mapping the future(s) of juvenile justice in Europe: complexities and challenges,' in B. Goldson ed. *Juvenile Justice in Europe: Past, present and future*, (2019) 209-253.

successful than others in their achievement of given standards does not presuppose that 'like is being compared with like', but on the contrary assumes that it is right (or at least useful) to hold all places to the same standard. In many respects it is precisely non-comparable places that are being compared. In general, if we are deciding where to invest and are concerned with local levels of respect for the rule of law it matters little that it is not 'fair' to compare Australia with Somalia. Where indicators refer to standards the more relevant question is whether the indicator chosen is a reliable pointer to whether the standard is being met. And, for at least some users of ranking indicators, it may be a moot question why they are not being met or even how they could be induced to raise their standards.

On the other hand, indicators used in different kinds of comparisons can also be seen as social constructions. Take the distinction between first and second order comparison. Studies of criminal justice indicators of all kinds show us that what appear to be the 'brute facts' which lie behind reported rates of crime, conviction and incarceration are in practice the result of judgements by those doing the counting. It is what these actors think does or should count as crime or deviance that matters rather than levels of behaviour as such.⁴² The rates and patterns we are examining are produced by actors relying on their own social theories of the causes of deviance and sometimes deliberately seeking to massage the figures for outside consumption. And numbers can be given different meanings depending on the purpose at hand (note the wording in the previously cited definition of global social indicators which speaks of 'capable of being used').

Take, for example, the international statistics of numbers of people in prison that have been used in the recent debate and interventions that concern alleged growth in punitiveness.⁴³ For the first type of comparison these numbers are taken as a (crude) indicator of levels of relative harshness that is then linked to contextual variables such as geographical situation, or political and economic factors such as the influence of neo liberal policies and sentiments (with countries following neo-liberal politics having the highest incarceration rates). For the second type of comparison they help to provide a measure of whether a given type of disposal is likely to lead to more or less people ending up in prison. For the third kind of comparison, prison rates may be taken as a pointer to whether enough is

⁴² See J. D. Douglas, *The Social Meanings of Suicide* (1967/2015); J. Kitsuse and A. Cicourel, 'A Note on the Uses of Official Statistics' (1963) 11 *Social Problems* 131–139; H. Von Hofer, 'Prison Populations as Political Constructs: The Case of Finland, Holland and Sweden' (2003) 4 *Journal of Scandinavian Studies in Criminology and Crime Prevention* 21 – 38.

⁴³ M. Cavadino and J. Dignan etc. *Penal Systems: A Comparative Approach* (2005); J. Pratt, D. Brown, M. Brown, S. Hallworth, eds. *The New Punitiveness: Trends, Theories, Perspectives* (2005)

being done to comply with international or transnational directives or treaties that relate to the organization of criminal justice proceedings. A figure such as a hundred prisoners in every hundred thousand of the population (based on what is found to be normal in a selection of developed economies, but not including the USA) can be re-purposed as a standard setting out limits of how many people should be imprisoned and a means of naming and shaming so as to bring about such change. Such claims about what is 'normal' may then get institutionalized as targets for good practice by some global social indicators.

Only empirical research can show us whether and when a given indicator is being used to measure, evaluate or guide behaviour. But it is likely that it will be involved in more than one of these tasks. Academic work that seeks explanation often also has a practical agenda; those trying to explain variability in prison rates are usually hoping that they may find a way to reduce unnecessary incarceration.⁴⁴ Like those designing global indicators, scholars engaged in disciplinary comparisons may use evaluative terms such as 'punitiveness', even if it is far from obvious that this term has cross cultural meaning. Conversely, social scientists may be willing to make use for explanatory purposes of data deriving from indicators that were developed for the purposes of ranking and evaluation rather than explanation. Susanne Karstedt, for example, has tried to demonstrate a relationship between the evaluative category of 'failed state' developed for ranking indicators by USA foreign policy advisors⁴⁵ with international levels of corruption.⁴⁶ Explanation and learning also come together in the search for 'what works' in criminal justice for those who mimic the experimental or quasi-experimental approach of the hard sciences.⁴⁷ And, commonly, ranking indicators rely on the other

⁴⁴ As pointed out some time ago by Ken Pease in his 'Cross-National Imprisonment Rates - Limitations of Method and Possible Conclusions' (1994) 34 *British Journal of Criminology* 116-130. See also D. Nelken, 'Comparative Criminal Justice: Beyond Ethnocentrism and Relativism' 6 (2009) *European Journal of Criminology* 291-311.

⁴⁵ N. Bhuta, 'Governmentalizing Sovereignty: Indexes of State Fragility and the Calculability of Political Order' in *Governance by Indicators: Global Power through Quantification and Rankings*, Davis et. al., op.cit., note 24, 132-164.

⁴⁶ S. Karstedt, 'Exit: The State. Globalisation, State Failure and Crime', in D. Nelken (ed.) *Comparative Criminal Justice and Globalisation* (2011) 107-124.

⁴⁷ L. W. Sherman, D. C. Gottfredson, D. MacKenzie, J. Eck, P. Reuter, and S. D. Bushway, *Preventing crime: What Works, What Doesn't, What's Promising. Research Brief. National Institute of Justice. Washington, D.C.: U.S. Department of Justice, Office of Justice Programs* (1998).

two kinds of indicators we have distinguished, often without paying much attention to the factors and values guiding the making of the indicators that they have chosen to build on or encompass.

When we study comparison as a social practice, we therefore need to be especially attentive to such overlaps, interferences and transformations. What is the relationship between the normal and the normative? How does a fact for some become a standard for others?⁴⁸ Above all, how do global social indicators make 'best' practice a synonym for that which is most highly ranked?

Recognising the knowledge and governance effects of social indicators

How far can the task of using ranking indicators for the goal of making places commensurable in terms of general standards be reconciled with the need to take local contexts seriously? To an extent getting 'the facts' right concerning local circumstances certainly does matter to the makers, users and targets of indicators (albeit in different ways). One of the ways indicators are said to be useful to sponsors and donors, for example, is the help they provide to counteract the danger of misrepresentation of results by those with whom they are engaging. More generally, the authority of global social indicators derives largely from their scientific and technical claims to successful description and measurement as they move us from the 'fact of authority' to the 'authority of the fact'. Blaustein et al. tell us that differences in context do need to be taken into account even when using ranking indicators to measure progress towards common standards. They claim, for example, that 'a risk-sensitive approach is certainly relevant to an international context given the likely diverse experiences of women victimized. As such, concerning the goal of gender equality, they tell us that 'working towards targets 5.2 and 5.3 'requires an appreciation of cultural and contextual risk factors and a rejection of homogenous group assumptions' (my underlining).⁴⁹ But, as we have argued, it is far from obvious that indicators can be applied to a large number of societies for the purpose of ranking and standard setting without making what Blaustein et. al. themselves refer to as 'homogenous group assumptions'. To make progress we need to learn more about how ranking indicators actually

⁴⁸ An important Foucauldian analysis by Francois Ewald uses research on insurance and industrial standardisation to chart "normalisation" as a process that collapses the "norm" and the "normal". F. Ewald, "Norms, Discipline, and the Law" (1990) 30 *Representations* 138.

⁴⁹ Blaustein id. op.cit. note 25, 778. N. Bhuta, D. V. Malito and G. Umbach, 'Indicators in Global Governance and the rise of reflexive indicator culture', in Malito, Umbach and Bhuta (eds.), op.cit. note 39, 1-29 at 17, also call for 'a turn to more contextually constructed measures of corruption, governance and sustainability',

work, what Merry has described as their 'knowledge' and 'governance' effects. Only with this fully taken on board will it be possible to see how best to support and critique projects such as the UN's Sustainability goals.

Take first the so called 'knowledge effect'. The literature that discusses this aspect of indicators argues that the comparisons they incorporate are often deliberately superficial. As Davis et. al. put it, 'the transformation of particularistic knowledge into numerical representations that are readily comparable strips meaning and context from the phenomenon'.⁵⁰ To achieve their effects indicators rely on naming, quantification and measurement. As Merry tells us, 'naming produces knowledge by announcing categories to be measured as if they were self-evident, open to public scrutiny, simple in conception, and readily accessible, in a way that private opinions are not. But the labels thus chosen do not necessarily accurately reflect the data that produce the indicators.'⁵¹ Decisions of what to measure and who does the measuring are all important. It is one thing to measure corruption by asking citizens or business people how often they have been asked for bribes. It is quite another if what is being surveyed is the tendency of different governmental departments to divert funds about which ordinary people may have little knowledge.⁵² Sometimes the organizations being assessed are even allowed to mark their own performance (as is also envisaged for the sustainability goals discussed by Blaustein et. al.).

Most empirical case-studies of global social indicators provide evidence of the extent to which they can be and are misleading. They show us that indicators often mask large areas of missing or incomplete data, demonstrate inability to draw significant distinctions between entities that are nonetheless hierarchically ranked, conceal much higher levels of underlying uncertainty than the indicator depicts, and make questionable choices about the weighting of different components of composite indicators. Well known problems arise when monitoring organizations, such as those charged with showing how funds are being used in refugee relief, rely on information provided by fieldworkers. 'Raw information ... collected and compiled by workers near the bottom of organized

⁵⁰ Davis et. al. 2012 op.cit. note 24, 8. Writing about benchmarks, Homolar likewise points out that that 'the goal of international comparability is prioritised above contextual validity and accuracy', A. Homolar 'Human security benchmarks: Governing human wellbeing at a distance', 41 *Review of International Studies*, (2015) 843–863 at 861.

⁵¹ S. E. Merry, 'Measuring the world: Indicators, Human Rights and Global Governance' (2011) 52 *Current Anthropology* s 84.

⁵² M.Akech, 'Evaluating the Impact of Corruption Indicators on Governance Discourses in Kenya', in Merry, Davis and Kingsbury (eds.), op.cit., note 39, 248.

hierarchies ... is transformed so as to make it accessible and amenable to those near the top'.⁵³ Refugee protection field officers, we are told, are asked to collect information on 154 detailed indicators.⁵⁴ Can they really be expected, to take just one of these, to count the number of latrines per 40,000 refugees, given the lack of access and security inside the camps? Because they often have to combine the task of reporting with their main responsibilities in resolving problems on the ground, not surprisingly, they tend to give priority to doing the job of saving lives over that of monitoring compliance, especially where they consider it impossible to do both. Likewise, they may be able or willing to tell us about the distribution of water supplies but not the number of evictions of refugees (if for example this would risk alienating host states).⁵⁵

But some criticisms of the accuracy of indicators go beyond pointing to matters that could, even in theory, be remedied. They tell us that they are 'constitutive', meaning by this that they are not neutral representations of the world but rather that they bring into being the social categories that they then rank. Ranking indicators in a sense constitute what they are supposed to be measuring.⁵⁶ Social entities such as failed or fragile states do not pre-exist the effort to identify and rank them. Evaluation precedes as well as follows the deployment of social indicators. As Uruena, discussing rule of law indicators, tells us, 'indicators do not (indeed, cannot) measure reality objectively, in the way a thermometer would measure temperature. Rather, they inject... a normative analysis to the reality they measure, and constitute it.'⁵⁷

Because what matters about indicators is above all whether others use them, rankings can easily become a 'currency'. If a ranking is widely held to be credible, users will credit it (or, sometimes, be obliged to credit it) without checking its validity and discovering what lies behind the judgments they are based on. In sum, when indicators are successful, context as an empirical question becomes in a way irrelevant. Indicators' success lies in their being able to transform behaviour nearer

⁵³ Davis, Kingsbury and Merry, *op.cit.*, note 39, 153.

⁵⁴ E. Dunlop, *New Issues in Refugee Research: Research Paper No. 214 Indications of Progress? Assessing the Use of Indicators in UNHCR Operations*: <https://www.unhcr.org/4e15bb2a9.pdf> accessed 31/1/2019.

⁵⁵ *id.*

⁵⁶ Even what is considered the appropriate unit of comparison, is produced through the action of differentiation as much as being its pre-existing object.

⁵⁷ R. Uruena, 'Indicators and the Law: A Case Study of the Rule of Law Index,' in Merry, Davis, and Kingsbury (eds.), *op.cit.* note 32, 75-102. Bhuta, Malito and Umbach *op.cit.*, note 45, at 15, characterise this as 'post- metrological realism'.

to a standard. In a sense they work not because they are true, they are true because they work for certain users. In addition, because ranking indicators offer a hybrid combination of efforts to measure and evaluate, it can be hard to decide even what it means for them to 'work'. What has become known as Goodhart's law states that once a social or economic indicator or other surrogate measure is made a target for the purpose of conducting social or economic policy, then (because of the reactions it will engender) it will lose the information content that would qualify it to play that role.

While some scholars point to evidence that indicators do help achieve their effects because of their threat of sanctions,⁵⁸ it is crucial to note that when places and people are judged according to metrics there is a well-known tendency for those involved to attempt to 'game' the system. This means that they set out to meet - or appear to meet - the target at the expense of the larger achievement that the indicator is supposed to represent. The 'larger context' crucial to the evaluating process is not only lost to view it is deliberately hidden from view. What if a notorious dictator busies himself in organising international and national efforts to curb human trafficking but allegedly does so in order to distract from his poor human rights record and as a way of limiting the extent to which his citizens travel abroad and learn about other societies?⁵⁹ Should this be considered as an example of improperly 'gaming' an indicator? Even if it is, should such activities nonetheless count as progress towards the target of reducing human trafficking?

These questions about what counts as success in using indicators brings us to the second issue concerning them, their so-called 'governance effects'. Here the problem raised has less to do with the accuracy of what indicators measure and more to with the politics of those making or using them. As Davis, Kingsbury and Merry write, indicators act as a 'technology of global governance', that is to say, they embody and implement political visions about existing problems and about how these problems have to be overcome. Such technologies of governance can be expected to affect: where, by whom, and in relation to whom governance takes place (the "topology of governance"); the processes through which standards are set; the processes through which decisions are made about the application of standards to particular cases; and the means and the dynamics of contesting and

⁵⁸ See e.g. J. G. Kelley and B. A. Simmons, 'Politics by Number: Indicators as Social Pressure in International Relations' (2015) 59 *American Journal of Political Science* 55.

⁵⁹ M. Zaliznaya and J. Hagan, 'Fighting Human Trafficking or Instituting Authoritarian Control? The Political Co-optation of Human Rights Protection in Belarus', in K.E. Davis et. al. (eds.), *op.cit.*, note 24, 344.

regulating exercises of power'.⁶⁰ Values such as the rule of law or judicial independence arise in specific contexts and are given different interpretations in different places. Similarly, as Homolar tells us, 'the process of translating the concept of human security into a series of tangible, measurable objects ('reification') relies on operationalizing normative assumptions about what constitutes 'liveable' human existence into observable and measurable categories'... 'The indicators chosen to make judgements about the state of human security thereby function to both concretize and reproduce abstract ideas about what constitutes a 'secure' human life.'⁶¹

Indicators, Merry argues, "camouflage the political considerations that shape the collection and presentation of data".⁶² In particular, as Blaustein et. al. also note, the ability to construct indicators typically rests in the hands of experts who are typically from the Global North. In terms of our argument here this means that, behind the appearance of universalism, it is their theories and values - what makes sense in their own context - which tend to be imposed on others.⁶³ As Merry also argues, we need to pay attention to the type of expertise involved in developing the indicator, what is measured, who funds the data collection, and which organization promotes the indicator. In her book most closely concerned with indicators in criminal justice she explains that in measuring levels of gender violence worldwide (one of the issues central to the paper by Blaustein et. al.), the choice to rely on measures of acts and injuries rather than subjective measurements of people's fear displaces the decision about whether the violence is severe from the person experiencing it to the experts who decide which acts are severe.⁶⁴ Likewise, Sokhi-Bulley, writing about the role of the Human Rights Watch NGO in developing human rights governance, tells us that human rights and country

⁶⁰ K. E. Davis, 'Indicators as a Technology of Global Governance', *Working Papers New York University School of Law* (2010) 15.

⁶¹ Homolar, op cit.

⁶² S. Merry, *The Seductions of Quantification: Measuring Human Rights, Gender Violence, and Sex Trafficking* (2016).

⁶³ Speaking about the rule of law, Frydman and Twining note that procedural, substantive or institutional definitions can all be used. But each of these emphasizes some political concerns over others. Law itself is likely to work differently because there are likely to be a variety of other mechanisms that may substitute for it or conflict with it. But a common feature of many indicators is the assumption of what has been called 'legal universalism'. B. Frydman and W. Twining 'A symposium on global law, legal pluralism and legal indicators' (2015) 47 *The Journal of Legal Pluralism and Unofficial Law*, 1-8.

⁶⁴ id.

specialists, including lawyers, reporters, activists, academics, transform the significance of human rights from being a potential discourse of resistance. Instead they are turned into apolitical technical indicators of the human rights performance of various actors. By these means, human rights discourse is 'co-opted into a discourse through which power operates'.⁶⁵

On the other hand, it is important to note that empirical studies of what goes on in the forums where standards are developed and progress assessed show that these processes are not altogether one-sided. Those being measured, including relatively powerless countries when subjected to measurement and management by more powerful ones, can and do find ways of influencing the making and application of indicators.⁶⁶ At times the formulation of the standards themselves may be revised after challenge.⁶⁷ Proposed standards are transformed *in situ* - if not always for the good. Commenting on the deployment of the idea of the rule of law in Myanmar, Cheesman explains that 'the rule of law serves as a trope for law and order'.⁶⁸ We mistake the problem for a gap between principle and practice, between aspiration and reality, to be rectified by better training, laws and funding, when the problem is of a different nature. Partisans of law and order are not the occupants of low rungs on ladder to the rule of law; they are climbing a different ladder altogether'.⁶⁹

More commonly, however, some parts of the local population and the local elites do welcome the application of a new agenda as something they can use in local struggles. The standards enshrined in ranking indicators are accepted by at least some of those involved precisely because they believe that the introduction of aspirational standards can change rather than reflect existing local practices. Ranking indicators and claims about best practice therefore play a crucial role in debates about which standards are 'better' and how practices should be standardised. In Italy, for example, hegemonic Anglo-American ideas concerning the independence of the judiciary are deployed by leading local

⁶⁵ Sokhi-Bulley, *op.cit.* note 36.

⁶⁶ See e.g. M. Serban, 'Rule of Law Indicators as a Technology of Power in Romania', in Merry, Davis and Kingsbury eds *op.cit.*, note 39, 199-221; and S. Musaraj, 'Indicators and Local Political Drama. Producing and Deploying Corruption Perception Data in Post-socialist Albania', in Merry, Davis and Kingsbury, *op.cit.* note 39, 222 -247.

⁶⁷ See e.g. the successful resistance by South Africa to the World Bank definition of better business standards, as described in D. Collier and P. Benjamin, 'Measuring Labor Market Efficiency: Indicators that Fuel an Ideological War and Undermine Social Concern and Trust in the South African Regulatory Process', in Merry, Davis, and Kingsbury (eds.), *op.cit.*, note 39, 284-316.

⁶⁸ N. Cheesman, *Opposing the rule of law* (2015), 264.

⁶⁹ *id.* 259 (quoting Martin Krygier).

academics who echo politicians in criticizing what they claim is the way judges - and prosecutors - misuse their high level of autonomy.⁷⁰ But this begs the question of whether places at greater risk of political corruption might actually need a high level of protection.⁷¹

What else can be done to overcome the drawbacks of global indicators?

For some of the anthropologists most closely associated with the study of global social indicators the cure for the deficit in contextual understanding is to put more emphasis on qualitative research. Merry complains that 'the current rush to quantification risks sacrificing the insights of rich, ethnographic accounts'.⁷² What needs to be achieved is the addition of contextual materials which will help produce what Merry calls more 'indicator literacy'.⁷³ Yet the methodological dispute between quantitative and qualitative approaches is one of principle, and is found dividing even those engaged in the first type of comparison where the purpose is to provide understanding for its own sake and not to rank a large number of units.⁷⁴ There must be doubts whether adding a qualitative approach here would help or rather undermine the whole exercise of global ranking by showing the

⁷⁰ See D. Nelken, 'Can Prosecutors be too Independent? An Italian case- study', in T. Daems, S. Snacken, D. Van zyl Smit eds. *European penology?* (2013) 241- 261.

⁷¹ op.cit. In the European Court of Human Rights the definition of what counts as the 'reasonable' length of court procedure for cases brought under article 6 of the ECHR tends to rely on what is the cross national average even if a countries' length in court procedures tend to be similar to the length of their bureaucratic processes more generally.

⁷² Merry op.cit. (2016), note 67, 2. She complains that, 'detailed, qualitative studies are often dismissed as anecdotal. That really misses a lot of knowledge that is produced by deep, contextualized studies that give you a lot more insight into the way things work.' See also: <http://www.law.nyu.edu/news/ideas/questioning-numbers-indicators-sally-merry-seductions-quantification> ,posted Aug 29, 2016, accessed 2/2/2019.

⁷³ id. 221. Blaustein et. al. , op.cit., note 25 write along similar lines.

⁷⁴ See e.g. M. Travers, 'Understanding Comparison in Criminal Justice Research: An Interpretive Perspective' (2008) 18 *International Criminal Justice Review* 389–405; and, more generally, J. Young, *The criminological imagination*, (2011).

difficulty of commensuration.⁷⁵ Nor is there any reason to think that qualitative data is necessarily more emancipatory given the complex relationship between ethnographers and the later stages of colonialism.⁷⁶

Some commentators suggest that ranking indicators can be made honest by relying on competition between rival indicators in the market place.⁷⁷ But consumers are often in no position to judge which indicators are (more) accurate. And they may in any case be constrained to accept their validity once they have become common currency. Alternatively, proponents of what they call 'global administrative law' suggest that indicators should be subjected to the same requirements as other public exercise of power such as transparent procedures, accountability and participation.⁷⁸ This may perhaps help deal with issues of governance but it has little to do with the accuracy of indicators.

An influential proposal by leading commentators and activists in the field about human rights, argues that a combination of contestability, and participation⁷⁹ has the potential to make such indicators do good work. According to Rosga and Satterthwaite, 'the human rights community's efforts to use statistics as part of a larger project of holding governments accountable to their populations, while it partakes of the same technologies of governmentality, can arguably be said to aim at different ends'.⁸⁰ For them, [t]he value of indicators as a social technology cannot be determined in advance, nor on the basis of the fact that they are largely quantitative.⁸¹ They admit that 'it may be true that quantitative methods, in their very abstraction and stripping away of contextualizing

⁷⁵ It is also important not to confuse the question of measurement with that of quantification. See A. Desrosières, 'Retroaction: How Indicators Feed Back onto Quantified Actors', in R. Rottenburg et. al. (eds.), *op.cit.*, note 34, 329.

⁷⁶ P. Pels, 'The anthropology of Colonialism: Culture, History and the Emergence of Western Governmentality' (1997) 26 *Annual Review of Anthropology* 163-183.

⁷⁷ T. Büthe, 'Beyond Supply and Demand. A *Political* Economic Conceptual Model', in Davis et. al., *op.cit.* note 24, 29-51.

⁷⁸ S. Cassese, and L. Casini, 'Public Regulation of Global Indicators', in Davis, Kingsbury, and Merry eds. *op.cit.*, note 16 ,465-474.

⁷⁹ For an account of how to empower those being measured so that they help to choose the relevant definition of their situation, see T. Pogge, 'Fighting Global Poverty' (2017) 13 *International Journal of Law in Context* 512.

⁸⁰ AJ. Rosga, and M.L. Satterthwaite 'The Trust in Indicators: Measuring Human Rights' (2009) 27 *Berkeley Journal of International Law*, 253 –315 at 256..

⁸¹ *id.*

information have particular – and especially high – risks for misuse by those with the power to mobilize them.'⁸² But they conclude that 'they are tools like any other. All tools can be misused; all social actors with power can misuse that power.'⁸³ They conclude, 'rather than trusting in numbers alone, those using human rights compliance indicators should embrace the opportunities presented by this new project, finding ways to utilize human rights indicators as a tool of global governance that allow the governed to form strategic political alliances with global bodies in the task of holding their governors to account'.⁸⁴ But whilst this strategy might - just- be viable with respect to human rights or the rule of law, it is more difficult to see what space for contestation could or should be granted when it comes to indicators dealing with human trafficking and corruption.⁸⁵ How much power to contest should be granted to those accused of doing too little to fight such practices or even perhaps acting in collusion with them?

Enough has been said to show the need for more study of the processes by which similar standards are applied to unlike places or units. Fortunately there are already good models of such research often even involving participant or non-participant observational studies of committee work in NGO's, IGO's or at the United Nations.⁸⁶ In an ethnography that deserves more recognition, Kruckenberg tells us about the contestation of human rights standards by states from the Global South. She points to the problem of distance, the dilemma of diplomatic feasibility and the competing pulls of change and consistency.⁸⁷ Merry herself, in documenting what she calls 'the Cultural Work of Commensuration', tells us about the work of Friends of the Chair committee of the UN statistical Commission as it sought 'to differentiate between severe and moderate physical violence across

⁸² id.

⁸³ A.J. Rosga and M.L. Satterthwaite, 'Measuring Human Rights': UN Indicators in Critical Perspective, in Davis et al. op.cit., note.24, 297-216 at 316.

⁸⁴ id.

⁸⁵ Sometimes, as in the case of indicators measuring fitness for accession to membership of the European Union, contestability is ruled out in practice because those being assessed are obliged to give prior consent to the process. It is the EU that lays down the rules. Admittedly, local actors can use indicators to gain power to make some progressive changes (for example in reducing discrimination). But this is achieved by endorsing, not by contesting, the requirements

⁸⁶ R. Nietzen and M. Sapignoli eds. *Palaces of Hope* (2017).

⁸⁷ L. J. Kruckenberg, *The UNreal World of Human Rights. An Ethnography of the UN Committee on the Elimination of Racial Discrimination* (2012).

countries, regions settings and a variety of social and cultural formations.⁸⁸ She tells us that this involves referring 'to the same thing, even though this thing is manifested differently in different places', designing the categories for counting which means inevitably lumping disparate things under one label and separating similar things that vary along a continuum under different labels. More empirical studies of how commensuration is accomplished in these situations, and what it reveals and what it obscures, will give us a better understanding of the limits of these ways of spreading best practices and ideal standards. ⁸⁹

⁸⁸ Merry, 2016 op. cit. note 67, 76.

⁸⁹ Ivory, op.cit. note 5, at 441 also concludes by asking for more 'consideration of how efforts to globally govern the crime of corruption may subtly *enable or inhibit* collective deliberation and individual human flourishing' (my underlining).